IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No. 660 of 2000

Date of Decision : 23.10.2007

State of H. P. …Appellant.

Versus:

Diler Singh and another …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No.*

For the appellant: Mr. V. K. Verma, Addl. A. G.

For the respondents : Mr. Ramakant Sharma, Advocate.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 1.10.1999 passed by the Addl. Chief Judicial Magistrate, Nurpur, Distt. Kangra, in Criminal Case No.7-II/97, titled as State v. Diler Singh and another, acquitting the accused of the charged offence under Sections 324, 323 & 506 read with Section 34 of the Indian Penal Code.

As per the case of the prosecution, on 27.9.1995, at about 7 A.M., Ram Piari (PW-1) had gone to fetch water from the village tap when the accused started giving beatings to her. Her son Bahadur Singh (PW-2) and her husband tried to save her,

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

when they were also beaten up by the accused persons. Further they entered into her house and also gave beatings inside the house. The matter was reported to the police and FIR No. 336/95 dated 27.9.1995 under Sections 324, 451 & 506 read with Section 34 IPC was registered with Police Station Indora. The matter was investigated and the danda (weapon of offence) was taken into possession vide seizure memo Ext.PW-3/A in presence of Shri Rajinder Kumar (PW-3) and the injured were got medically examined by Dr. T. K. Roy (PW-5), who issued Medico Legal Certificate (Ext. PW-5/A). The investigation was completed by HC Shakti Chand (PW-6) who prepared the site plan (Ext.PW-6/A) and the took possession of other incriminating documents. After completion of investigation, challan was presented in the Court.

Accused Diler Singh was charged for the offences under Sections 323 and 324 read with Section 34 IPC and the other accused persons, namely, Gopi Singh and Tarsem Singh were also charged for the same offence (though wrongly typed as 313 instead of 323). The accused did not plead guilty and claimed trial. Accused Gopi Singh expired during the trial and the matter was proceeded against the other two accused persons.

In order to prove its case, the prosecution examined 6 witnesses and statements of the accused under Section 313 Cr.PC were also recorded.

Having perused the material on record, the Court below came to the conclusion that the prosecution had failed to prove its case beyond doubt and the depositions of the witnesses, being contradictory, were not creditworthy and could not be relied upon to convict the accused of the charged offence. The Court found that the relations between the parties were strained and the weapon of offence was also not identified by the complainant.

I have perused the material on record including the depositions of the witnesses.

Complainant Smt. Ram Piari (PW-1) is the injured who is stated to have been beaten up by the accused persons. Shri Bahadur Singh (PW-2) is the son of PW-1 who intervened to save his mother and was also given beatings by the accused persons. Shri Rajinder Kumar (PW-3) is the attesting witness to the seizure memo Ext.PW-3/A. Shri Bhagirath (PW-4) is the police official who has recorded the first information Ext.PW-4/A and FIR Ext.PW-4/B. Dr.T. K. Roy (PW-5) has medically examined the complainant and issued MLC Ext.PW-5/A. HC Shakti Chand (PW-6) is the Investigating Officer who carried out the investigation and filed the challan in the Court for trial.

As per the version of Dr. T. K. Roy (PW-5), Smt. Ram Piari (PW-1) suffered three injuries which were simple in nature. According to him, injuries No. 2 & 3 could have been caused by falling on hard surface and Injury No.1 could have

been caused by falling on hard surface fixed with sharp edged object. The case of the prosecution is that the accused persons had given blows to the complainant with danda only. There is no explanation on record to show as to how the complainant suffered injury No.1.

Smt. Ram Piari (PW-1) in her cross-examination has admitted fact that the complainant and the accused persons were not on talking terms. Importantly, PW-1 has not identified the weapon of offence, namely, danda Ext.P-2. In fact she has categorically stated that danda shown to her in the Court is not the one with which the accused persons had beaten her. She has further submitted that the incident took place in the presence of Shri Hans Raj and that she had disclosed the same to the police at the time of recording of her statement u/s 161 Cr.PC. This fact, however, is not borne out from the record. Shri Hans Raj who was the only independent witness has not been associated by the Investigating Agency and was also not examined in the Court.

Shri Bahadur Singh (PW-2) has stated that at the time of occurrence of the incident approximately 20 to 25 people had arrived. Even this witness has referred to the presence of Hans Raj. This witness has deposed that even he had suffered injury due to the beating given by the accused but however, there is nothing on record to substantiate his statement.

PW-3 has only proved the recovery of weapon Ext.P-2. PW-4 & PW-6 are police officials who have proved the investigation being carried out by them and seizure of various other documents.

There is a contradiction in the version of PW-1 and PW-2. PW-1 has stated that all the accused persons had entered her house and given beatings to her with danda whereas PW-2 has deposed that only Diler Singh entered the house and gave beatings to her mother.

Admittedly, as has come through the version of PW-1 and PW-2 that the parties were not on speaking terms and were also not having good relations. It has also come on record through these witnesses that there were other independent persons at the site and more particularly Shri Hans Raj. As per the version of PW-1, she was saved from the clutches of the accused by said Hans Raj. There is no explanation on record as to why said Hans Raj has not been associated by the Investigating Agency or examined during trial. The weapon of offence has also not been identified by the complainant. In this view of the matter, it would not be safe to rely upon the sole testimony of PW-1 & PW-2 and convict the accused persons of the charged offence.

The accused persons have had the benefit of being acquitted by the Court below.

In my view, the Court below has fully appreciated the evidence while arriving at its conclusion. Having perused the statements of the witnesses, I am of the considered view that there is no perversity in complete appreciation of the material on record.

For all the aforesaid reasons, I see no reason to interfere with the findings and conclusions of the Court below and the appeal is accordingly dismissed. Bail bonds stand discharged.

(Sanjay Karol), J.

October 23, 2007
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